

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
GREGORIO KILLI CAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
LUCY MCBATH, GEORGIA
JAHANA HAYES, CONNECTICUT
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
HALEY M. STEVENS, MICHIGAN
TERESA LEGER FERNÁNDEZ,
NEW MEXICO
MONDAIRE JONES, NEW YORK
KATHY E. MANNING, NORTH CAROLINA
FRANK J. MRVAN, INDIANA
JAMAAL BOWMAN, NEW YORK
MARK POCAN, WISCONSIN
JOAQUÍN CASTRO, TEXAS
MIKIE SHERRILL, NEW JERSEY
JOHN A. YARMUTH, KENTUCKY
ADRIANO ESPAILLAT, NEW YORK
KWEISI MFUME, MARYLAND



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member
JOE WILSON, SOUTH CAROLINA
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JIM BANKS, INDIANA
JAMES COMER, KENTUCKY
RUSS FULCHER, IDAHO
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA
MARIANNETTE MILLER-MEEKS, IOWA
BURGESS OWENS, UTAH
BOB GOOD, VIRGINIA
LISA C. MCCLAIN, MICHIGAN
DIANA HARSHBARGER, TENNESSEE
MARY E. MILLER, ILLINOIS
VICTORIA SPARTZ, INDIANA
SCOTT FITZGERALD, WISCONSIN
MADISON CAWTHORN, NORTH CAROLINA
MICHELLE STEEL, CALIFORNIA
JULIA LETLOW, LOUISIANA
VACANCY

September 1, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Dear Secretary Cardona:

On Monday, the Department of Education (Department) Office for Civil Rights (OCR) sent letters to five states notifying them of the opening of directed investigations under Section 504 of the *Rehabilitation Act of 1973* (Section 504) and Title II of the *Americans with Disabilities Act*. Using threats to infringe on states' authorities to protect students and ensure access to education is a gross overreach of federal power, so we are writing to gain a better understanding of the Department's position on this topic.

In a recent blog post previewing this action, you said, "the Department may initiate a directed investigation if facts indicate a potential violation of the rights of students as a result of state policies and actions." You concluded by saying, "You have my word: We will follow the science. We will do what is best for students."

The science was also clear when the Biden administration took office last winter: it indicated that students needed to be back in school and that in-person instruction was safe. Yet Congressional Democrats and the Biden administration dithered.

The Administration allowed the teachers unions to dictate school reopening guidance to discourage schools from reopening, and Congressional Democrats refused Republicans' efforts to require schools to provide full-time in-person instruction options as a condition of accepting COVID-19 relief funds.

This was detrimental for students across the country, especially for students with disabilities. Twice this spring, the Committee on Education and Labor heard testimony from parents of

children with disabilities harmed by their states' and school districts' refusal to provide adequate in-person instruction. One parent testified about her families' experiences in Oregon and said:

My middle daughter is Lizzie, age 9, in the third grade, and Lizzie has Down syndrome... She is a hidden victim of pandemic policies and prolonged school closures... For one year, Lizzie has been denied all physical, occupational, and speech therapies provided under her legal IEP because services are telehealth only, even now after all educators were prioritized for the vaccine. She has been denied services mandated by her IEP. She has lost every single friendship we built from kindergarten because there are no classrooms with peers and no sports or extracurricular activities. A once vibrant life full of dancing on stages, scoring goals in soccer, and friends who helped her open her lunchbox, gone.

Another parent testified about his experiences in Virginia and said:

Our son is diagnosed with Autism Spectrum Disorder and ADHD. Before school closed due to the pandemic, he was a very happy boy who loved school, especially being around his friends. But things changed quickly after schools closed. The lack of social contact and the routine of a normal school day, which are incredibly important to children with Autism, caused him to create an imaginary world last Spring with "52 friends," as he told us. By summer, his imaginary world had become so real to him that he struggled to differentiate real from the pretend, causing him to have visual, auditory, and tactile hallucinations which became so bothersome that on his 9th birthday, he asked me, "Daddy, can I die for my birthday?"...During the Fall, as we watched him deteriorate before our eyes and not be able to engage in virtual learning, we pleaded with school administrators to open schools for in-person learning for students with disabilities, which aligned with the guidelines by the Virginia [Department] of Health... However, school administrators told us it was not safe to reopen for in-person learning - this despite the fact that many private schools throughout the DC area and country had successfully reopened.

We are concerned about the selective application of your so-called commitment to science and the well-being of students, as well as your commitment to administering the laws faithfully under your jurisdiction. To help Congress better understand your views on these topics and the legal theory behind the announced OCR investigations, please respond to the following questions:

1. Is it your position that students with disabilities are entitled under Section 504 to be educated in schools in which everyone is wearing a mask?
 - a. If it is your position that students with disabilities are entitled under Section 504 to be educated in schools in which everyone is wearing a mask, does this policy apply to all school districts?
 - b. If this policy does apply to all school districts, please explain the rationale for targeting five specific states with policies allowing parents to determine if their children wear masks to schools.

- c. If this policy does not apply to all school districts, please explain why the policy applies only to the five targeted states.
2. If it is not your position that students with disabilities are entitled under Section 504 to be educated in schools in which everyone is wearing a mask, please provide the legal rationale under which OCR can initiate investigations of states under Section 504 based on those states' masking policies.
3. How many investigations has OCR initiated to determine if states' or school districts' refusal to provide in-person instruction and related services to students with disabilities during the 2020-2021 school year violated Section 504?
4. Please cite the statutory, regulatory, or administrative or judicial case history that would support a finding of Section 504 non-compliance based on a jurisdiction's masking requirements but not a jurisdiction's refusal to provide legally required education and related services.

Please provide answers to these questions in writing by close of business **Friday, September 10, 2021**. If you have questions regarding this request, please contact Mandy Schaumburg of the committee Republican staff at mandy.schaumburg@mail.house.gov. Thank you for your attention to this matter.

Sincerely,



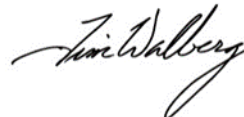
Virginia Foxx
Ranking Member
Committee on Education and Labor



Joe Wilson
Member of Congress



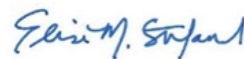
Glenn Thompson
Member of Congress



Tim Walberg
Member of Congress



Glenn Grothman
Member of Congress



Elise Stefanik
Member of Congress



Rick Allen
Member of Congress



Jim Banks
Member of Congress

James Comer
Member of Congress

Fred Keller
Member of Congress

Mariannette Miller-Meeks
Member of Congress

Bob Good
Member of Congress

Diana Harshbarger
Member of Congress

Victoria Spartz
Member of Congress

Madison Cawthorn
Member of Congress

Russ Fulcher
Member of Congress

Greg Murphy
Member of Congress

Burgess Owens
Member of Congress

Lisa McClain
Member of Congress

Mary Miller
Member of Congress

Scott Fitzgerald
Member of Congress

Michelle Steel
Member of Congress